IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 140 OF 2007

IN

FAMILY COURT APPEAL NO. 8 OF 2007

Ranjana Vinod Kejriwal. .. Applicant.

vs.

Vinod Babulal Kejriwal, .. Respondent.

Mr. N.B. Shah h/f R.S. Ghadge for Applicant.

Mr. G.B. Tirodkar h/f. T.A. Nalawade for respondent.

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CORAM: J.N. PATEL &

A.A. SAYED, JJ.

DATE: 28TH AUGUST 2007.

P.C.

. Heard the learned counsel for the parties.

2. This is an application for bringing the legal representative on record filed by the applicant. On issuance of notice, the proposed legal heir has filed his affidavit in reply strongly contesting being impleaded as respondent.

3. It is the case of the applicant (original appellant) that the property owned by Vinod Babulal Kejriwal is presently in the hands of the respondent and, therefore, he is proper and necessary party and the reliefs sought in the appeal can be granted against him as the cause of action survives and, therefore, the application should be allowed. On the other hand, on behalf of the proposed respondent it is submitted that in view of the fact that the original respondent Vinod Babulal Kejriwal having expired, cause of action does not survive and the proposed respondent cannot be joined as legal representative of the said Vinod Babulal Kejriwal as he does not remain to be member of the family of the proposed respondent having been given in adoption. It is further submitted that the claim of the appellant before the Family Court was for seeking a declaration that the marriage of the deceased respondent was valid, and, therefore, she is entitled to claim maintenance and stridhan out of the property owned by the deceased respondent.

4. We have heard the rival contentions made by the learned counsel for the parties. We are of the view that there is no legal impediment in bringing the proposed respondent on record. In so far as the contention raised by the proposed respondent that the cause of action does not survive and no relief can be granted against him is concerned, it is the matter to be considered on merits.

5. It is also brought to our notice that this very appellant has filed a substantive suit on the original side of this Court which is registered as Suit No. 249 of 1996 wherein identical reliefs were sought against the proposed respondent including Vinod Babulal Kejriwal who is no more and this fact has been suppressed from this Court. In so far as this contention is concerned, it cannot be a reason for rejecting the application made by the applicant. It is open to the proposed respondent to raise this issue either in the appeal or before the trial Court.

6. We made specific query from the learned counsel appearing for the proposed respondent as to whether the proposed respondent, who was party respondent in the said suit, has moved the Court, after the death of Vinod Babulal Kejeriwal, for dismissal of the suit as cause of action does not survive. We are informed that as the said Vinod Babulal Kejeriwal has recently died, the other defendants in the suit would take appropriate steps as advised and for the present they do not want to make any statement.

7. We, therefore, allow the application in terms of prayer clause (a). Necessary amendment to be carried out within two weeks.

8. The learned counsel appearing for the proposed

respondent waives service on behalf of the newly added respondent. The learned counsel for the appellant assures the Court that he would furnish copy of the amended memo of appeal to the newly added respondent within two weeks.

(J.N. Patel, J.)

(A.A. Sayed, J.)